

only facilities used solely for local distribution and/or sales of electric energy at retail regulated by a state commission; or

(iii) A transmitting utility or company if the transaction involves an internal corporate reorganization that does not present cross-subsidization issues and does not involve a traditional public utility with captive customers.

(2) Any holding company in a holding company system that includes a transmitting utility or an electric utility is granted a blanket authorization under section 203(a)(2) of the Federal Power Act to purchase, acquire, or take:

(i) Any non-voting security (that does not convey sufficient veto rights over management actions so as to convey control) in a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company; or

(ii) Any voting security in a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company if, after the acquisition, the holding company will own less than 10 percent of the outstanding voting securities; or

(iii) Any security of a subsidiary company within the holding company system.

(3) The blanket authorizations granted under paragraph (c)(2) of this section are subject to the conditions that the holding company shall not:

(i) Borrow from any electric utility company subsidiary in connection with such acquisition; or

(ii) Pledge or encumber the assets of any electric utility company subsidiary in connection with such acquisition;

(4) A holding company granted blanket authorizations in section (c)(2) shall provide the Commission with the same information, on the same basis, that the holding company provides to the Securities and Exchange Commission in connection with any securities purchased, acquired or taken pursuant to this section.

(5) Any holding company in a holding company system that includes a trans-

mitting utility or an electric utility is granted a blanket authorization under section 203(a)(2) of the Federal Power Act to acquire a foreign utility company. However, if such holding company or any of its affiliates, its subsidiaries, or associate companies within the holding company system have captive customers in the United States, the authorization is conditioned on the holding company verifying by a duly authorized corporate official of the holding company that the proposed transaction:

(i) Will not have any adverse effect on competition, rates, or regulation; and

(ii) Will not result in, at the time of the transaction or in the future:

(A) Any transfer of facilities between a traditional utility associate company with wholesale or retail customers served under cost-based regulation and an associate company;

(B) Any new issuance of securities by traditional utility associate companies with wholesale or retail customers served under cost-based regulation for the benefit of an associate company;

(C) Any new pledge or encumbrance of assets of a traditional utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; or

(D) Any new affiliate contracts between non-utility associate companies and traditional utility associate companies with wholesale or retail customers served under cost-based regulation, other than non-power goods and services agreements subject to review under sections 205 and 206 of the Federal Power Act.

(iii) A transaction by a holding company subject to the conditions in paragraphs (c)(5)(i) and (ii) of this section will be deemed approved only upon filing the information required in paragraphs (c)(5)(i) and (ii) of this section.

[Order 669, 71 FR 1374, Jan. 6, 2006]

### § 33.2 Contents of application—general information requirements.

Each applicant must include in its application, in the manner and form and in the order indicated, the following general information with respect to the applicant and each entity

whose jurisdictional facilities or securities are involved:

(a) The exact name of the applicant and its principal business address.

(b) The name and address of the person authorized to receive notices and communications regarding the application, including phone and fax numbers, and E-mail addresses.

(c) A description of the applicant, including:

(1) All business activities of the applicant, including authorizations by charter or regulatory approval (to be identified as Exhibit A to the application);

(2) A list of all energy subsidiaries and energy affiliates, percentage ownership interest in such subsidiaries and affiliates, and a description of the primary business in which each energy subsidiary and affiliate is engaged (to be identified as Exhibit B to the application);

(3) Organizational charts depicting the applicant's current and proposed post-transaction corporate structures (including any pending authorized but not implemented changes) indicating all parent companies, energy subsidiaries and energy affiliates unless the applicant demonstrates that the proposed transaction does not affect the corporate structure of any party to the transaction (to be identified as Exhibit C to the application);

(4) A description of all joint ventures, strategic alliances, tolling arrangements or other business arrangements, including transfers of operational control of transmission facilities to Commission approved Regional Transmission Organizations, both current, and planned to occur within a year from the date of filing, to which the applicant or its parent companies, energy subsidiaries, and energy affiliates is a party, unless the applicant demonstrates that the proposed transaction does not affect any of its business interests (to be identified as Exhibit D to the application);

(5) The identity of common officers or directors of parties to the proposed transaction (to be identified as Exhibit E to the application); and

(6) A description and location of wholesale power sales customers and unbundled transmission services cus-

tomers served by the applicant or its parent companies, subsidiaries, affiliates and associate companies (to be identified as Exhibit F to the application).

(d) A description of jurisdictional facilities owned, operated, or controlled by the applicant or its parent companies, subsidiaries, affiliates, and associate companies (to be identified as Exhibit G to the application).

(e) A narrative description of the proposed transaction for which Commission authorization is requested, including:

(1) The identity of all parties involved in the transaction;

(2) All jurisdictional facilities and securities associated with or affected by the transaction (to be identified as Exhibit H to the application);

(3) The consideration for the transaction; and

(4) The effect of the transaction on such jurisdictional facilities and securities.

(f) All contracts related to the proposed transaction together with copies of all other written instruments entered into or proposed to be entered into by the parties to the transaction (to be identified as Exhibit I to the application).

(g) A statement explaining the facts relied upon to demonstrate that the proposed transaction is consistent with the public interest. The applicant must include a general explanation of the effect of the transaction on competition, rates and regulation of the applicant by the Commission and state commissions with jurisdiction over any party to the transaction. The applicant should also file any other information it believes relevant to the Commission's consideration of the transaction. The applicant must supplement its application promptly to reflect in its analysis material changes that occur after the date a filing is made with the Commission, but before final Commission action. Such changes must be described and their effect on the analysis explained (to be identified as Exhibit J to the application).

(h) If the proposed transaction involves physical property of any party, the applicant must provide a general or key map showing in different colors

the properties of each party to the transaction (to be identified as Exhibit K to the application).

(i) If the applicant is required to obtain licenses, orders, or other approvals from other regulatory bodies in connection with the proposed transaction, the applicant must identify the regulatory bodies and indicate the status of other regulatory actions, and provide a copy of each order of those regulatory bodies that relates to the proposed transaction (to be identified as Exhibit L to the application). If the regulatory bodies issue orders pertaining to the proposed transaction after the date of filing with the Commission, and before the date of final Commission action, the applicant must supplement its Commission application promptly with a copy of these orders.

(j) An explanation, with appropriate evidentiary support for such explanation (to be identified as Exhibit M to the application):

(1) Of how applicants are providing assurance that the proposed transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company; or

(2) If no such assurance can be provided, an explanation of how such cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

[Order 642, 65 FR 71014, Nov. 28, 2000, as amended by Order 669, 71 FR 1375, Jan. 6, 2006]

**§ 33.3 Additional information requirements for applications involving horizontal competitive impacts.**

(a)(1) The applicant must file the horizontal Competitive Analysis Screen described in paragraphs (b) through (f) of this section if, as a result of the proposed transaction, a single corporate entity obtains ownership or control over the generating facilities of previously unaffiliated merging entities (for purposes of this section, merging entities means any party to the proposed transaction or its parent companies, energy subsidiaries or energy affiliates).

(2) A horizontal Competitive Analysis Screen need not be filed if the applicant:

(i) Affirmatively demonstrates that the merging entities do not currently conduct business in the same geographic markets or that the extent of the business transactions in the same geographic markets is *de minimis*; and

(ii) No intervenor has alleged that one of the merging entities is a perceived potential competitor in the same geographic market as the other.

(b) All data, assumptions, techniques and conclusions in the horizontal Competitive Analysis Screen must be accompanied by appropriate documentation and support.

(1) If the applicant is unable to provide any specific data required in this section, it must identify and explain how the data requirement was satisfied and the suitability of the substitute data.

(2) The applicant may provide other analyses for defining relevant markets (*e.g.* the Hypothetical Monopolist Test with or without the assumption of price discrimination) in addition to the delivered price test under the horizontal Competitive Analysis Screen.

(3) The applicant may use a computer model to complete one or more steps in the horizontal Competitive Analysis Screen. The applicant must fully explain, justify and document any model used and provide descriptions of model formulation, mathematical specifications, solution algorithms, as well as the annotated model code in executable form, and specify the software needed to execute the model. The applicant must explain and document how inputs were developed, the assumptions underlying such inputs and any adjustments made to published data that are used as inputs. The applicant must also explain how it tested the predictive value of the model, for example, using historical data.

(c) The horizontal Competitive Analysis Screen must be completed using the following steps:

(1) *Define relevant products.* Identify and define all wholesale electricity products sold by the merging entities during the two years prior to the date of the application, including, but not limited to, non-firm energy, short-term